

Copy
B3

to concentrate an active principle thus obtained, the molar mass of a different molecular species present having a principal peak at about 15,000 Daltons.--

REMARKS

Claims 1-4 are pending in the present application.

By way of the present amendment, claims 1-4 have been amended to more particularly point out and distinctly claim the present invention. New claim 5 has been added. Support for claim 5 may be found in original claim 1 and generally throughout the specification. It is believed that the present amendment places the present application in condition for allowance.

In the outstanding Official Action, the Examiner states that in order for a patent issuing on the present application to obtain the benefit of priority based on priority papers in a parent application, the claim for such form priority must be made in the present application.

Indeed, the Application Datasheet filed in the present application states that the present application claims priority to French Application No. 9916098, filed December 16, 1999. Moreover, the present application also claims the benefit of U.S. Patent Application No. 09/482,885, filed January 14, 2000, wherein the foreign priority papers may be found. Applicant believes that a copy of the priority papers was filed in the

present application with the substitute specification filed on February 11, 2002.

The Official Action objected to the specification for allegedly not providing the necessary reference to U.S. Patent Application No. 09/482,885. However, it is believed that the present amendment obviates this contention.

The specification has been amended to recite that this application is a divisional application of U.S. Patent Application No. 09/482,885, filed on January 14, 2000, now abandoned.

In the outstanding Official Action, claims 1-4 were rejected under 35 USC §102(b) as allegedly being anticipated by, or in the alternative, under 35 USC §103(a) as obvious in view of HASEGAWA et al. These rejections are respectfully traversed.

Applicant believes that the Official Action fails to satisfy its burden in showing that the claimed invention has been anticipated or rendered obvious by HASEGAWA et al. In imposing the rejection, the Official Action states that it "appears" to be identical to the claimed invention. The Official Action then attempts to shift the burden on the applicant to prove that the claimed invention is novel and non-obvious.

However, as the Examiner is aware, to constitute anticipation, a publication must disclose each and every recitation of the claim. *In re Marshall*, 577 F.2d, 301, 198 USPQ 344 (CCPA 1978). Applicant believes that HASEGAWA et al. fail to disclose a process for firming the skin, obtaining wheat proteins

by crushing grains of wheat, or obtaining an active principle in accordance with the claimed invention.

HASEGAWA et al. disclose a cosmetic composition which provides moisture to human skin or hair. Applicant believes that HASEGAWA et al. fail to teach the step of obtaining wheat proteins by crushing grains of wheat. Moreover, HASEGAWA et al. certainly do not teach obtaining wheat proteins from fresh grains of wheat.

Moreover, applicant notes that HASEGAWA et al. teach a different process. HASEGAWA et al. teach that the whole product must be hydrolyzed first and after the liquid is treated with starch hydrolase to hydrolyze starch. (See working example). Thus, this stands in contrast to the claimed invention. As a result, it is believed that the Official Action fails to provide any evidence that HASEGAWA et al. teach the same ingredients and process.

While HASEGAWA et al. teach that the water-soluble portions of the disclosed composition may have an average molecular weight of 10 to 200,000 or smaller, HASEGAWA et al. do not discuss or even mention an active principle with a peak at about 15,000. Indeed, considering that HASEGAWA et al. use distinct ingredients, a different process, and are interested in a distinct fraction or portion of a water-soluble wheat starch, applicant does not believe that HASEGAWA et al. disclose the claimed invention.

In fact, contrary to the assertions of the Official Action, HASEGAWA et al. do not teach a process of firming skin. HASEGAWA et al. teach a composition and method for "softening, moistening, film-forming and smoothing skin or hair". (See page 5). Applicant believes that one of ordinary skill in the art would clearly appreciate that moisturizing skin and hair is not the same as providing a process for forming skin.

Thus, in view of the above, it is believed that the Official Action fails to anticipate the claimed invention.

While the Official Action contends that it would be obvious to one of ordinary skill in the art that HASEGAWA et al. teach the claimed invention, applicant notes that HASEGAWA et al. fail to provide any motivation to modify their teachings in order to obtain the claimed invention.

Applicant traverses the assertion that it would be merely a matter of judicious selection to one of ordinary skill in the art to modify the amounts of the ingredients in the source of the ingredients as set forth in the claimed invention. The Examiner is respectfully reminded that before a parameter may be optimized, the parameter must first be recognized as result effective. *In re Antoine*, 559 F.2d 618, 195 USPQ 6 (CCPA 1997). Here, HASEGAWA et al. fail to disclose or suggest that the parameters cited by the Official Action could be modified to "optimize" the claimed invention.

Applicant does not believe that HASEGAWA et al. disclose or suggest the same ingredients, experimental

conditions, or physical properties as set forth in the claimed invention. Applicant believes that the Official Action fails to satisfy its burden in showing that HASEGAWA et al. anticipates and/or renders obvious the claimed invention.

In view of the present amendment and the foregoing remarks, therefore, it is believed that the present application is now in condition for allowance, with claims 1-5, as presented. Allowance and passage to issue on that basis are accordingly respectfully requested.

Attached hereto is a marked-up version of the changes made to the claims. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

Respectfully submitted,

YOUNG & THOMPSON

By Philip A. DuBois
Philip A. DuBois
Agent for Applicant
Registration No. 50,696
745 South 23rd Street
Arlington, VA 22202
Telephone: 703/521-2297

June 6, 2003

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

The claims were amended as follows:

--1. (amended) A process for firming the skin to counter the effects of aging, comprising:

applying to the skin of a person in need of the same a cosmetologically effective amount of a composition, wherein said composition is obtained from wheat proteins by crushing grains of fresh wheat [so as] to obtain a flour, dissolving [this] said flour in water to obtain a solution, hydrolyzing [the] said solution [thus obtained] in the presence of proteases, separating [the] soluble and insoluble phases in the hydrolyzed material, and concentrating [the] said soluble phase thereby to concentrate [the] an active principle thus obtained, the molar mass of [the] a different molecular species present having a principal peak at about 15,000 Daltons.--

--3. (amended) A process as claimed in claim 1, wherein the conditions of said hydrolysis are [such] so that the pH is maintained constant between 4.0 and 10.0.--

--4. (amended) A process as claimed in claim 1, wherein the conditions of said hydrolysis are [such] so that the temperature is maintained between 35 and 80°C.--